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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 546

CITY OF MERIDIAN
APPELLANT

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
APPELLEE

MOTION OF APPELLANT TO REVERSE AND REMAND FOR DETERMINATION BY THREE-JUDGE DISTRICT COURT

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IN THE SUPREME COURT OF THE UNITED STATES

No. 546

CITY OF MERIDIAN
APPELLANT

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
APPELLEE

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION OF APPELLANT TO REVERSE AND REMAND FOR DETERMINATION BY THREE-JUDGE DISTRICT COURT

Comes the Appellant, the City of Meridian, Mississippi, and moves the Court to assume jurisdiction of this Appeal under its power to superintend and control; and thereupon to reverse and vacate the judgment of the Court of Appeals for the Fifth Circuit entered by said Court on the 9th day of June, 1958, and to order the remand of the action to the District Court for the Southern District of Mississippi, with directions to vacate the final judgment of said District Court, for determination by a District Court of three judges to be organized under 28 U. S. Code, Chapter

155, Sections 2281 and 2284; and in support of said motion, Appellant shows the following, to wit:

I.

Article XIV of the Complaint herein (original record page 11, et seq.) contains the following allegations:

> "There is an actual controversy between the plaintiff and the defendant. The City of Meridian is presently demanding that plaintiff pay to it two per cent (2%) of its monthly service charges in the City of Meridian and is asserting a right to collect said sum based upon the interpretation of House Bill No. 123 adopted by said City of Meridian. Plaintiff has denied any obligation or liability on its part to make such payment, and has refused to make any such payments. Under these circumstances, it is essential that the plaintiff obtain a construction of this statute and a determination and declaration as to its construction and validity, for the plaintiff cannot otherwise ascertain its rights or liabilities. In the absence of such determination and declaration, the rights of the plaintiff in the premises might be held indefinitely in suspension to the great prejudices of plaintiff.
>
> "Plaintiff avers, upon information and belief, that unless declaratory relief is granted by this Court, plaintiff will be subjected to a multiplicity of suits by various municipalities seeking to enforce collection of a percentage of its revenues from the plaintiff.
>
> "Plaintiff has no other adequate, efficient and

speedy remedy, and unless declaratory relief is granted by this Court, plaintiff cannot otherwise have its rights to use and occupy the streets of the City of Meridian adjudicated unless and until the defendant takes the initiative and files suit against plaintiff.

"Plaintiff further alleges that it is a regulated public utility which has no source of revenues other than its customers and subscribers. As such utility it is plaintiff's duty to pay all charges which it is legally obligated to pay, and not to pay any charges that it is not legally obligated to pay. Any charge imposed upon plaintiff in favor of municipalities for the use of the streets therein ultimately would have to be passed on to and borne by the rate-paying public. In fixing the rates and charges presently in force and effect for telephone service, no provision was made for the payment of any percentage of plaintiff's revenues to municipalities as compensation for the use of the streets, and such charge was not taken into consideration in fixing said rates and charges. Plaintiff's rates and charges which are now in force and effect do not allow any leeway whatsoever to the plaintiff with respect to any increases which might occur in its operating costs. It is apparent, therefore, that if plaintiff is to be required to pay this charge to defendant and other municipalities, it will be imperative that the plaintiff receive additional revenues so that plaintiff may recoup the cost of such payment. If it could be finally determined that plaintiff is required to make said payment, no relief would or could be legally or otherwise afforded to it as to

any increased revenues it was entitled to demand and collect from its patrons pending and prior to the date of such determination, and all such needed additional revenues would be wholly and irretrievlost to it. It is, therefore, imperative and essential that plaintiff obtain an immediate declaration as to its rights and liabilities in the premises."

II.

While said Complaint nowhere alleges in so many words that if Plaintiff is not granted the relief demanded therein it will suffer irreparable injury, the facts alleged in Article XIV, quoted above, sustained the legal conclusion that if Appellant and other municipalities within the State of Mississippi should be permitted to pursue their remedies at law and collect the two percent (2%) of the service charges allowed to them by House Bill Number 123 of the 1956 Regular Session of the Legislature of the State of Mississippi, Appellee would be without remedy, either at law or in equity, to recover back the sums paid by it, or the cost of defending a multiplicity of suits, so that the expenses incurred and money paid would be lost to Appellee, thus causing irreparable injury.

III.

While said Complaint does not pray or make demand for the issuance of an injunction, under the Rules of Civil Procedure and specifically under Rule 54 (c), United States District Courts are under the duty to grant the relief to which the parties are entitled, even if the party thus to be relieved has not demanded such relief in his pleading; and, therefore, in the instant case, if the Plaintiff, Appellee here, had been entitled to relief, it would have been entitled to an injunction to restrain and prevent the collection of the

(2%) of the gross revenues collected by it, as authorized by House Bill Number 123. This action was brought solely for the purpose of having a law of the State of Mississippi declared unconstitutional. Such declaration would be of no effect in law or equity, except as the basis for an injunction and the ultimate relief sought by Appellee is available in no other way. A District Court of the United States has jurisdiction to enjoin the enforcement of a state statute upon the ground of its unconstitutionality only as authorized and directed by 28 U. S. C. 2281. Such Court must be organized pursuant to 28 U. S. C. Section 2284. See *Federal Housing Administration v. The Darlington, Inc.*, No 13 this term, decided Nov. 24, 1958, U. S. , 3 L. Ed. 2d 132, 79 S. Ct. 141 and 352 U. S. 977, 1 L. Ed. 2d 363, 77 S. Ct. 381.

Wherefore, Appellant respectfully submits that the Courts below were without jurisdiction of this Civil Action, and that on this Appeal, this Court should exercise its powers of superintending control and the judgments of the lower Courts should be vacated and the cause should be remanded, for determination by a District Court of three Judges.

Respectfully submitted,

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ATTORNEYS FOR APPELLANT

CERTIFICATE

I, the undersigned Lester E. Wills, one of the attorneys for Appellant herein, hereby certify that I have served the foregoing Motion upon Mr. Charles B. Snow, Milner Bldg., Jackson, Mississippi, Mr. O. Winston Cameron, Threefoot Building, Meridian, Mississippi, and Mr. John A. Boykin, Attorney, Southern Bell Telephone and Telegraph Company, Atlanta, Georgia, by mailing to each of them a true copy of said Motion.

Witness my signature this the day of January, 1959.

.....

Lester E. Wills
Box 566
Meridian, Mississippi